

★ APR 28 2021 ★

BROOKLYN OFFICE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

X

UNITED STATES OF AMERICA,

- against -

BRENDAN HUNT,

Defendant.

X

PAMELA K. CHEN, United States District Judge:

Ladies and gentlemen of the jury, now that you have heard all the evidence in the case as well as the arguments of the lawyers, it is my duty to give you instructions as to the law applicable in this case. We are all grateful to you for the close attention you have given to this case thus far. I ask that you continue to do so as I give you these instructions.

As you know, Defendant Brendan Hunt is charged with one count of threatening to assault or murder a United States official, with intent to impede, intimidate, or interfere with such official while engaged in the performance of official duties, or with intent to retaliate against such official on account of the performance of official duties. Defendant has pled not guilty to this charge.

My instructions will be in three parts:

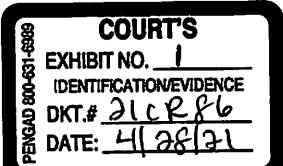
First, I will instruct you regarding the general rules that define and govern the duties of a jury in a criminal case such as this;

Second, I will instruct you as to the particular crime charged in this case and the specific elements that the Government must prove with respect to that crime; and

Third, I will give you some general rules regarding your deliberations.

## I. GENERAL INSTRUCTIONS: ROLE OF THE COURT AND JURY

Let me start by restating our respective roles as judge and jury.



## **A. FUNCTION OF THE INDICTMENT AND WHAT IS NOT IN EVIDENCE**

Defendant, Mr. Hunt, has been charged in an Indictment with violating federal law. The Indictment is merely a statement of the charge against Defendant. The Indictment is not itself evidence nor does it create an inference of guilt. As previously stated, Defendant has entered a plea of not guilty to the charge against him in the Indictment.

## **B. THE DEFINITION OF EVIDENCE AND MEANING OF OBJECTIONS**

You must determine the facts in this case based solely on the evidence presented, or those inferences which can reasonably be drawn from the evidence presented. Evidence has been presented to you in the form of sworn testimony from the witnesses and documentary exhibits, including video and photographs, that have been received in evidence by me. As I will also instruct you, certain evidence is admissible only for a limited purpose.

There are rules of evidence that control what can be received into evidence. When a lawyer asks a question or offers an exhibit into evidence, and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. This simply means that the lawyer is requesting that I make a decision on a particular rule of evidence. Lawyers have a duty to their client to object when they believe something is improper under the rules of evidence. You should not be influenced by the objection. If I sustain an objection, you must ignore the question or exhibit and must not try to guess what the answer might have been or the exhibit might have contained. If I overrule the objection, the evidence will be admitted, but do not give it special attention because of the objection.

Certain things are not evidence: the Indictment; arguments, statements, or summations by the lawyers; objections to the questions or to the offered exhibits; and any testimony that has been excluded, stricken, or that you have been instructed to disregard.

There are times when differing inferences may be drawn from facts, whether proved by direct or circumstantial evidence. Perhaps the Government asks you to draw one, and Defendant asks you to draw another. It is for you, and you alone, to decide what inferences you will draw.

No significance should be attached to the fact that a document, other exhibit, or witness testimony was introduced by one party rather than by the other. Any party is entitled to the benefit of any evidence tending to establish its contentions, even though such evidence may have come from witnesses or documents introduced by another party.

#### **D. WITNESS CREDIBILITY**

In deciding what the facts are in this case, you must consider all of the evidence that has been offered. In doing this, you must decide which testimony to believe and which testimony not to believe. You are the sole judges of credibility of the witnesses and the weight their testimony deserves. Your determination of the issue of credibility very largely must depend upon the impression that a witness made upon you as to whether or not that witness was telling the truth or giving you an accurate version of what occurred. You may choose to disbelieve all or part of any witness's testimony. In deciding whether and to what extent to believe a witness's testimony, you may take into account any number of factors, including the following:

- the witness's opportunity to see, hear, and know about the events he or she described;
- the witness's ability to recall and describe those things;
- the witness's manner in testifying—was the witness candid and forthright or did the witness seem as if he or she was hiding something, being evasive, or suspect in some way;
- how the witness's testimony on direct examination compared with how the witness testified on cross-examination;
- the reasonableness of the witness's testimony in light of all of the other evidence in the case;

witness. It is for you to decide, after weighing all the evidence and in light of the instructions I have given you about the factors relevant to determining the credibility of any witness, whether to accept the testimony of a law enforcement witness, and what weight, if any, that testimony deserves.

#### **G. TESTIMONY OF EXPERT WITNESSES**

Ordinarily, witnesses are restricted to testifying concerning matters of fact. In this case, I have permitted (a) certain witness(es), who we refer to as (an) "expert witness(es)," to express their opinions about matters that are at issue. An expert witness may be permitted to testify to an opinion on those matters about which he or she has special knowledge, skill, experience, and training. Such testimony is presented to you on the theory that someone who is experienced and knowledgeable in the field can assist you in understanding the evidence or in reaching an independent decision on the facts.

In weighing this opinion testimony, you may consider the witness's qualifications, his or her opinions, the reasons for testifying, as well as all of the other considerations that ordinarily apply when you are deciding whether or not to believe a witness's testimony. You may give the opinion testimony whatever weight, if any, you find it deserves in light of all of the evidence in this case. You should not, however, accept opinion testimony merely because I allowed the witness to testify concerning his or her opinion. Nor should you substitute it for your own reason, judgment, and common sense. The determination of the facts in this case rests solely with you.

In sum, an expert witness is in all other respects the same as any other witness. You should consider his or her qualifications, his or her experience, his or her interest in the outcome of the case, if any, his or her demeanor, and all the other factors you have been instructed to consider in assessing the credibility of other witnesses.

would merely provide additional testimony to facts already in evidence. I remind you, however, that because the law presumes that Defendant is innocent, the burden of proving his guilt beyond a reasonable doubt is on the Government throughout the trial. Defendant does not have the burden of proving his innocence or of producing any evidence or calling any witnesses at all.

#### **J. PRIOR INCONSISTENT STATEMENTS**

You may have heard evidence that a witness or witnesses made a statement on an earlier occasion that counsel argues is inconsistent with the witness's trial testimony. You may consider such evidence of the prior inconsistent statement only for the limited purpose of helping you to decide whether to believe the trial testimony of the witness who is claimed to have contradicted himself or herself. If you find that the witness made an earlier statement that conflicts with his or her trial testimony, you may consider that fact in deciding how much of his or her trial testimony, if any, to believe.

In making this determination, you may consider whether the witness purposely made a false statement or whether it was an innocent mistake; whether the inconsistency concerns an important fact or whether it had to do with a small detail; whether the witness had an explanation for the inconsistency and whether that explanation appealed to your common sense.

It is exclusively your duty, based upon all of the evidence and your own good judgment, to determine whether the prior statement was inconsistent, and if so, how much weight, if any, to give to the inconsistency in determining whether to believe all or part of the witness's testimony.

#### **K. STIPULATIONS OF FACT**

A stipulation is an agreement among the parties that a certain fact is true. The attorneys for the United States and the attorneys for Defendant have entered into stipulations concerning facts that are relevant to this case.

## **N. OTHER PERSONS NOT ON TRIAL**

During this trial, you have heard evidence about the involvement of other persons in the events related to this case. That these individuals are not on trial before you is not your concern. Your concern is solely the defendant on trial before you.

## **O. NO SYMPATHY, FEAR, PREJUDICE, OR BIAS**

In reaching your verdict, you are to be guided solely by the evidence in this case, and not be swayed by sympathy, fear, prejudice, or bias for one side or the other. The crucial question that you must ask yourselves as you sift through the evidence is: Has the Government proven the guilt of Defendant beyond a reasonable doubt?

It is for you alone to decide whether the Government has met that burden as to each element of the crime charged, solely on the basis of the evidence before you and the law as I charge you. If you should find that the Government has met its burden of proving Defendant's guilt beyond a reasonable doubt, you may render a verdict of guilty without concern for sympathy or any other reason. On the other hand, if you have a reasonable doubt as to Defendant's guilt, you should not hesitate because of sympathy, fear, prejudice, or bias for or against anyone to find him not guilty.

## **P. EQUALITY OF THE GOVERNMENT AND THE DEFENSE BEFORE THE COURT**

The fact that this prosecution is brought in the name of the United States of America entitles the Government to no greater consideration than that accorded to any other party to a litigation. By the same token, the Government is also entitled to no less consideration. All parties, whether the Government or individuals, are equal before the law.

## **Q. PUNISHMENT**

The question of possible punishment of a defendant is of no concern to the jury and should not, in any sense, enter into or influence your deliberations. The duty of imposing a sentence on a

that is so convincing that a reasonable person, based on that proof, would not hesitate to draw the conclusion offered by the Government.

A reasonable doubt is not caprice or whim. It is not speculation or suspicion. It is not an excuse to avoid the performance of an unpleasant duty. And it is not sympathy. The law does not require that the Government prove guilt beyond all possible doubt: proof beyond a reasonable doubt is sufficient to convict.

If, after fair and impartial consideration of all the evidence, you are satisfied beyond a reasonable doubt of Defendant's guilt, you should find Defendant guilty of the charge. On the other hand, if after fair and impartial consideration of the evidence or lack of evidence concerning the charge, you have a reasonable doubt as to Defendant's guilt, you must find Defendant not guilty of the charge.

## **II. SUBSTANTIVE LAW**

I will now turn to the second part of this charge and instruct you as to the legal elements of the criminal count the Government has alleged. Defendant is formally charged in an indictment. As I instructed you at the outset of this case, an indictment is a charge or accusation; it is not evidence. The Indictment in this case contains one count upon which you will be asked to render a verdict. I will describe that count in greater detail in a moment.

### **A. VENUE**

Venue refers to the location of the charged crime. You must consider whether any act in furtherance of the crime occurred within the Eastern District of New York. I instruct you that the Eastern District of New York encompasses Brooklyn, Queens, and Staten Island in New York

The issue of intent requires you to make a determination about a defendant's state of mind, something that rarely can be proved directly. A wise and careful consideration of all the circumstances before you, however, may permit you to make a determination as to a defendant's state of mind. Indeed, in your everyday affairs, you are frequently called upon to determine a person's state of mind from his or her words and actions in given circumstances. You are asked to do the same here.

It is sufficient that a defendant intentionally engaged in conduct that the law forbids. The Government is not required to prove that Defendant is aware of the law that actually forbids his conduct.

#### **D. THE INDICTMENT**

The Indictment charges Defendant with threatening to assault or murder Members of the United States Congress. The Indictment is not evidence; it is a charge or accusation. The Charge in the Indictment reads as follows:

On or about and between December 6, 2020 and January 8, 2021, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant BRENDAN HUNT, also known as "X-Ray Ultra," did knowingly and intentionally threaten to assault and murder a United States official, with intent to impede, intimidate and interfere with such official while engaged in the performance of official duties, and with intent to retaliate against such official on account of the performance of official duties, to wit: HUNT threatened to assault and murder Members of the United States Congress.

The statute relevant to that charge is Section 115(a)(1)(B) of Title 18 of the United States Code, which states:

Whoever . . . threatens to assault, kidnap, or murder, a United States official, . . . with intent to impede, intimidate, or interfere with such official . . . while engaged

Third, that Defendant acted with the intent to impede, intimidate, or interfere with that official while they were engaged in the performance of their official duties or with the intent to retaliate against that official on account of the performance of their official duties.

### **1. FIRST ELEMENT: Threatening to Assault or Murder**

The first element that the Government must prove beyond a reasonable doubt is that Defendant made a threat to assault or murder. As this is a case involving speech, I advise you that the First Amendment protects vehement, scathing, and offensive criticism of public officials, including Members of Congress. The First Amendment therefore protects political exaggeration or expressions of opinion. Further, the First Amendment protects mere advocacy of the use of force or violence. But the First Amendment does not protect “true threats” as I will now define the phrase.

For a statement to be a true threat, it must have been made under such circumstances that an ordinary, reasonable person who heard or read the statement, and who is familiar with the context of the statement, would understand it as a serious expression of an intent to inflict bodily injury. This question is informed by whether the statement is, on its face and under the circumstances, so unequivocal, unconditional, immediate, and specific as to the person threatened as to convey seriousness and imminence. But depending on the circumstances, even a conditional and implicit statement can be a threat. An example of such a statement is “your money or your life,” which, although conditional and not containing explicitly threatening language, could nonetheless constitute a threat.

As noted, you heard testimony from individuals, including law enforcement officers, who viewed Defendant’s alleged threats. Although that testimony may inform your view of the context in which a particular statement was made, it is ultimately for you—and not any witness, law

We need to go back to the U.S. Capitol when all of the Senators and a lot of the Representatives are back there, and this time we have to show up with our guns. And we need to slaughter these motherfuckers . . . [O]ur government at this point is basically a handful of traitors . . . so what you need to do is take up arms, get to D.C., probably the inauguration . . . so called inauguration of this motherfucking communist Joe Biden . . . [T]hat's probably the best time to do this, get your guns, show up to D.C., and literally just spray these motherfuckers . . . like, that's the only option . . . [T]hey're gonna come after us, they're gonna kill us, so we have to kill them first . . . [S]o get your guns, show up to D.C., put some bullets in their fucking heads. If anybody has a gun, give me it, I'll go there myself and shoot them and kill them . . . [W]e have to take out these Senators and then replace them with actual patriots . . . [T]his is a ZOG government . . . [T]hat's basically all I have to say, but take up arms against them.

- Fourth, a January 8, 2021 response, to two messages on the social media website Parler: “exactly, enough with the ‘trust the plan’ bullshit. lets go, jan 20, bring your guns #millionmilitiamarch[.]”

To return a guilty verdict on this count, you must be unanimous as to at least one specific threat that you find the Government has proved beyond a reasonable doubt.

As the parties reminded you during their summations, you must follow my instructions on the law, and disregard any explanations by the lawyers about the law that differ from my instructions. In case either party’s closing statement caused any confusion on this issue, I want to reiterate that the Government has proven its case if you find the evidence meets all the required elements of the crime as to any one of Defendant’s four alleged threats, even if you find that it does not meet the elements as to any other of the alleged threats.

performance of their official duties, or with the intent to retaliate against the officials on account of the performance of their official duties.

“Impede” means to stop the progress, obstruct or hinder.

“Intimidate” means to make timid or fearful, to inspire or affect with fear, to frighten, to deter, or to overawe.

To “interfere with” means to come into collision with, to intermeddle, to hinder, to interpose, or to intervene.

To “retaliate against” means to return like for like, or to act in reprisal for some past act.

Direct proof of a defendant’s intent is almost never available. It would be a rare case where it could be shown that a person wrote or stated that as of a given time he or she committed an act with a particular intent. Such direct proof is not required. The ultimate fact of intent, though subjective, may be established by circumstantial evidence, based upon the defendant’s outward manifestation, his or her words, conduct, acts, and all of the surrounding circumstances disclosed by the evidence, and the rational or logical inferences that may be drawn from them.

You may consider, for example, whether there is evidence Defendant intended or did not intend any of his statements to reach the officials in question. The Government, however, does not need to prove that the alleged threats actually reached those officials.

## **G. INTOXICATION**

There has been evidence that Mr. Hunt may have been intoxicated, whether by alcohol and/or marijuana, at the time he made and/or posted the statements at issue. Intoxication in itself is not a legal defense to a criminal charge. However, you may consider whether Mr. Hunt was intoxicated at the time he made and/or posted any of the statements in determining whether he had the required “intent to impede, intimidate or interfere with [a United States official] engaged

note, through the Deputy Marshal, signed by your foreperson. No member of the jury should attempt to communicate with me except by a signed writing, and I will never communicate with any member of the jury on any subject touching upon the merits of the case other than in writing, or orally here in open court.

**C. YOUR RECOLLECTION GOVERNS / REQUESTS FOR TRIAL TESTIMONY**

Your recollection governs. Nobody else's. If, in the course of your deliberations, your recollection of any part of the testimony should fail, or you should find yourself in doubt concerning my instructions to you on the law, you may request that a witness's or witnesses' testimony, or portions thereof, be sent back to you in the jury room. Again, you may make such a request by a note to the Deputy Marshal. I suggest, however, that you be specific to avoid receiving testimony that you do not want or need. Describe as best and precisely as you can what you want to hear and be patient because it sometimes takes a while to find the testimony in the record.

To the extent possible, the exhibits that were admitted as evidence during the trial will be sent back to you for your deliberations. However, some exhibits, such as audio recordings or documents maintained only in electronic format, cannot be sent back with you. However, you can request to have that evidence played or presented to you in the courtroom.

**D. DELIBERATIONS AND UNANIMOUS VERDICT**

Your duty is to reach a fair conclusion from the law as I have given it to you and the evidence that has been presented in this case. This duty is an important one. When you are in the jury room, listen to each other, and discuss the evidence and issues in the case amongst yourselves. It is the duty of each of you, as jurors, to consult with one another, and to deliberate with a view toward reaching agreement on a verdict, if you can do so without violating your individual judgment and conscience. While you should not surrender conscientious convictions of what the

I will ask you to wait for a few moments while I discuss with counsel whether there is anything further about which you need to be charged.